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No. 87-860

IN THE
Supreme Court of the United States
OCTOBER TERM, 1987

JARRETT E. WOODS, JR., JOSEPH L. BIEGEL,
WESTERN SAVINGS ASSOCIATION, and
WESTERN CAPITAL CORPORATION,
Petitioners,

v.

FEDERAL HOME LOAN BANK BOARD,
FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION,
WALTER, FAULK, DAVID BRADLEY, EDWIN J. GRAY,
JOSEPH SELBY, and
WESTERN FEDERAL SAVINGS AND LOAN ASSOCIATION,
Respondents.

On a Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

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REPLY BRIEF OF PETITIONERS

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REPLY

Respondents in their brief opposing a writ of certiorari fail to recognize one of the important ways in which the district court's application of the arbitrary and capricious standard of review violates Petitioners' right to a meaningful hearing. In applying the arbitrary and capricious standard of review, the district court decided that its review was "confined to the administrative record." *See* Petition for Writ of Certiorari at 37a. However, in

this case the administrative record before the district court was admittedly incomplete and consisted solely of the one-sided, uncrossexamined, and untested evidence that the government chose to submit to support the taking. It was not an administrative record compiled in the course of an adjudication or hearing in which the Petitioners were able to participate.

It is, therefore, evident, under its application of the arbitrary and capricious standard of review, that the district court did not review, and could not have reviewed, the evidence presented by Petitioners in any meaningful way consistent with constitutional requirements. Moreover, the district court refused to permit any discovery to complete the administrative record.[1] Instead, the district court upheld the government's taking based solely on the government's constitutionally deficient evidence.

Upholding the constitutional rights of Petitioners to a meaningful hearing at a meaningful time would not impede the government's interest in preserving the public confidence in thrift institutions and in protecting the integrity of the federal insurance program. The government would not be prohibited from taking action. Upholding those rights, however, would, after the government takes action, provide the check against mistaken deprivations required by the Constitution and would assure that the government is properly exercising its duties in accord with constitutional constraints. Without the Court's consideration of this case, it is likely that the constitutional violations complained of by Petitioners will be repeated in many other cases.

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[1] The allegations made by Respondents to support the taking are clearly subject to challenge, and discovery is necessary therefor. For example, much is made of Western Saving Association's use of brokered deposits. Contrary, however, to Respondents' indications that brokered deposits are improper, the Federal Home Loan Bank Board has taken actions to encourage brokered deposits. See The Bank Board Watch, September 11, 1987 at H-2.

CONCLUSION

For the reasons set forth above, and as more fully set forth in the Petition for Writ of Certiorari, a writ of certiorari should be granted.

Respectfully submitted,

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